IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 21694 of 2004

Between:

Gadde Penchalaiah S/o.G.Pedda Penchalaiah
R/o.Dundigam Village, Dagadarthi Mandal, Nellore District.

..... PETITIONER

AND

1 The District Collector, Nellore Nellore District.
2 The Revenue Divisional Officer Kavali, Nellore District.
3 The Mandal Revenue Officer Dagadarthi Village and Mandal, Nellore District.

.....RESPONDENTs

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass a writ, order or a direction,one in the nature of writ of Mandamus, declaring the action of the Respondent No.3 in evicting the petitioner from the land to an extent of Ac 5.00 cents in Sy.Nos 222/3 and 223/2 situated in Dundigam Village, Dagadarthi Mandal, Nellore District, without conducting any enquiry, is arbitrary unreasonable and to set aside the impugned order passed by 3rd respondent in B-248/2004 dated 10.9.2004 and consequentially direct the respondents not to take any action.

Counsel for the Petitioner:MR.G.TUHIN KUMAR

Counsel for the Respondent No.: GP FOR REVENUE

The Court made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 21694 of 2004

O R D E R:

For violation of terms and conditions of patta granted to the original assignee – writ petitioner, the Mandal Revenue Officer vide impugned proceedings No.B-248/2004 dated 10.9.2004 ordered resumption of the land cancelling the assignment to the writ petitioner. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner contended that without issuing any notice to the petitioner the impugned proceedings have been passed and thereby the principles of natural justice have been violated.

On the other hand, learned Government Pleader for Revenue opposed the same on the ground that the petitioner has an alternative remedy to file an appeal before the Revenue Divisional Officer to challenge the order of the M.R.O. and therefore the petition is devoid of merit.

Perused the impugned proceedings and the allegations in the affidavit.

It is an admitted fact that the assignment was granted in favour of the petitioner to an extent of Ac.5-00 of land in S.Nos. 222/3 and 223/2 situated in Dundigam village of Dagadarthi Mandal. Thereafter the impugned proceedings have been issued on the ground that the land was sold away to some other 3rd parties and hence the original assignee violated the terms and conditions of the grant of patta, and accordingly the resumption of the land was ordered. In the impugned proceedings itself it is stated “show-cause notice has not been issued to the original assignee/legal heir of the original assignee to show cause within 15 days from the date of

receipt of notice as to why the assignment patta granted in his/her favour should not be cancelled for violation of condition of the grant".

No doubt, there is an alternative remedy available to the petitioner, but the same is not a bar for this court to exercise its jurisdiction under Article 226 of the Constitution of India, at least under two circumstances, namely, (1) when there is violation of principles of natural justice by the authority concerned and (2) when the authority who issued the notice has no jurisdiction at all. A bare perusal of the impugned proceedings itself shows that no notice has been given to the original assignee – writ petitioner before the order of resumption. Therefore, it is a clear case where the respondent-authority violated the principles of natural justice.

Hence, the impugned proceedings dated 10.9.2004 are set aside. However, the respondents are at liberty to pass appropriate orders if they want to resume the land for violation of condition of grant, in accordance with law, after giving reasonable opportunity to the original assignee – writ petitioner as well as the occupants, if any.

The writ petition is disposed of accordingly.

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K.C. Bhanu, J.

Date: 25.11.2004.

Note:

Furnish C.C. in two days.

(BO)

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Collector, Nellore Nellore District.
2 The Revenue Divisional Officer Kavali, Nellore District.
3 The Mandal Revenue Officer Dagadarthi Village and Mandal, Nellore District.

4. .2CCs to Government Pleader for Revenue.

2.2CD copies.